
HOUSE BILL No. 1955

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-31-3-14.5; IC 16-42-3-4; IC 25-1-1.1-3; IC 31-30-1-4; IC 34-24-1-1; IC 35-38-1-7.1; IC 35-42-1-1; IC 35-45-6-1; IC 35-46-1-8; IC 35-47-4-5; IC 35-48-4; IC 35-50.

Synopsis: Dealing in methamphetamine. Provides that a person who: (1) knowingly or intentionally manufactures or delivers methamphetamine; or (2) possesses with intent to manufacture or deliver methamphetamine commits dealing in methamphetamine, a Class B felony. Makes the offense a Class A felony if: (1) the amount of the drug involved weighs three grams or more; (2) the person delivered the drug to a person less than 18 years of age at least three years junior to the person; or (3) the person delivered the drug on a school bus or in, on, or within 1,000 feet of school property, a public park, or a family housing complex. Provides that a person who knowingly or intentionally: (1) purchases, rents, or otherwise procures chemicals, supplies, equipment, or a laboratory location; or (2) sets up equipment or supplies with the intent to illegally manufacture methamphetamine commits illegal operation of a methamphetamine laboratory, a Class C felony. Adds the offense of dealing in methamphetamine to conform with other statutes that concern dealing in cocaine, narcotic drugs, and other controlled substances including: (1) specifying that a juvenile court does not have jurisdiction over a person for allegedly dealing in methamphetamine; (2) providing that, if a person commits dealing in methamphetamine, certain occupational and professional licenses and certifications held by the person and certain motor vehicle licenses and registrations held by the person may be revoked or suspended; and (3) providing that certain property used by the person to commit the offense may be seized.

Effective: July 1, 2001.

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January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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HOUSE BILL No. 1955



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-31-3-14.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. The commission
3 may permanently revoke a license or certificate under procedures
4 provided by section 14 of this chapter if the individual who holds the
5 license or certificate issued under this title is convicted of any of the
6 following:

- 7 (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.
- 8 (2) **Dealing in methamphetamine under IC 35-48-4-1.5.**
- 9 (3) Dealing in a schedule I, II, or III controlled substance under
- 10 IC 35-48-4-2.
- 11 (3) (4) Dealing in a schedule IV controlled substance under
- 12 IC 35-48-4-3.
- 13 (4) (5) Dealing in a schedule V controlled substance under
- 14 IC 35-48-4-4.
- 15 (5) (6) Dealing in a substance represented to be a controlled
- 16 substance under IC 35-48-4-4.5.
- 17 (6) (7) Knowingly or intentionally manufacturing, advertising,



1 distributing, or possessing with intent to manufacture, advertise,
2 or distribute a substance represented to be a controlled substance
3 under IC 35-48-4-4.6.

4 ~~(7)~~ (8) Dealing in a counterfeit substance under IC 35-48-4-5.

5 ~~(8)~~ (9) Dealing in marijuana, hash oil, or hashish under
6 IC 35-48-4-10(b).

7 ~~(9)~~ (10) Conspiracy under IC 35-41-5-2 to commit an offense
8 listed in subdivisions (1) through ~~(8)~~: (9).

9 ~~(10)~~ (11) Attempt under IC 35-41-5-1 to commit an offense listed
10 in subdivisions (1) through ~~(8)~~: (9).

11 ~~(11)~~ (12) A crime of violence (as defined in IC 35-50-1-2(a)).

12 ~~(12)~~ (13) An offense in any other jurisdiction in which the
13 elements of the offense for which the conviction was entered are
14 substantially similar to the elements of an offense described under
15 subdivisions (1) through ~~(11)~~: (12).

16 SECTION 2. IC 16-42-3-4 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. A drug or device is
18 considered to be misbranded under any of the following conditions:

19 (1) If the labeling of the drug or device is false or misleading in
20 any way.

21 (2) If the drug or device is in package form unless the drug or
22 device bears a label containing:

23 (A) the name and place of business of the manufacturer,
24 packer, or distributor; and

25 (B) an accurate statement of the quantity of the contents in
26 terms of weight, measure, or numerical count.

27 However, under clause (B) reasonable variations shall be
28 permitted and exemptions as to small packages shall be
29 established by rules adopted by the state department.

30 (3) If any word, statement, or other information required to appear
31 on the label or labeling, under this chapter or a rule adopted under
32 IC 16-42-1-2 is not prominently placed on the drug or device with
33 conspicuousness (as compared with other words, statements,
34 designs, or devices in the labeling) and in such terms that make
35 the label likely to be read and understood by the ordinary
36 individual under customary conditions of purchase and use.

37 (4) If the drug or device:

38 (A) is for use by humans; and

39 (B) contains any quantity of the narcotic or hypnotic substance
40 alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis,
41 carbromal, chloral, coca, cocaine, codeine, heroin, marijuana,
42 morphine, opium, paraldehyde, peyote, **methamphetamine**,

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1 or sulphonmethane, or any chemical derivative of such
 2 substance, which derivative after investigation has been found
 3 to be and is designated as habit forming, by rules adopted by
 4 the state department under IC 16-42-1 through IC 16-42-4 or
 5 by regulations issued under 21 U.S.C. 352(d);
 6 unless the label on the drug or device bears the name and quantity
 7 or proportion of that substance or derivative and the statement
 8 "Warning † May Be Habit Forming".

9 (5) If a drug, unless the following conditions are met:

10 (A) The label on the drug bears, to the exclusion of any other
 11 nonproprietary name except the applicable systematic
 12 chemical name or the chemical formula, the following:

13 (i) The established name of the drug, if any.

14 (ii) If the drug is fabricated from at least two (2) ingredients,
 15 the established name and quantity of each active ingredient,
 16 including the kind and quantity or proportion of any alcohol
 17 and, whether active or not, the established name and
 18 quantity or proportion of any bromides, ether, chloroform,
 19 acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine,
 20 hyoscine, hyoscyamine, arsenic, digitalis, digitalis
 21 glucosides, mercury, ouabain, strophanthin, strychnine,
 22 thyroid, or any derivative or preparation of those substances
 23 contained in the drug. However, the requirement for stating
 24 the quantity of the active ingredients, other than the quantity
 25 of those specifically named in this subdivision, applies only
 26 to prescription drugs.

27 (B) If a prescription drug, the established name of the drug or
 28 ingredient on the label (and on any labeling on which a name
 29 for the drug or ingredient is used) is printed prominently and
 30 in type at least half as large as that used for any proprietary
 31 name or designation for the drug or ingredient.

32 However, to the extent that compliance with the requirements of
 33 clause (A)(ii) or clause (B) is impracticable, exemptions shall be
 34 allowed under rules adopted by the state department or by
 35 regulations promulgated under the Federal Act.

36 (6) Unless the drug's or device's labeling bears:

37 (A) adequate directions for use; and

38 (B) adequate warnings against use in those pathological
 39 conditions or by children where the drug's or device's use may
 40 be dangerous to health or against unsafe dosage or methods or
 41 duration of administration or application in the manner and
 42 form that is necessary for the protection of users.

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1 However, if any requirement of clause (A) as applied to any drug
 2 or device is not necessary for the protection of the public health,
 3 the state department shall adopt rules exempting the drug or
 4 device from that requirement.

5 (7) If a drug purports to be a drug the name of which is
 6 recognized in an official compendium, unless the drug is
 7 packaged and labeled as prescribed in the compendium. However,
 8 the method of packing may be modified with the consent of the
 9 state department in accordance with regulations promulgated by
 10 the federal security administrator under the Federal Act.
 11 Whenever a drug is recognized in both the United States
 12 Pharmacopoeia and the Homeopathic Pharmacopoeia of the
 13 United States, the drug is subject to the requirements of the
 14 United States Pharmacopoeia with respect to packaging and
 15 labeling unless the drug is labeled and offered for sale as a
 16 homeopathic drug. In that case the drug is subject to the
 17 Homeopathic Pharmacopoeia of the United States and not to the
 18 United States Pharmacopoeia.

19 (8) If a drug or device has been found by the federal security
 20 administrator or the state department to be a drug liable to
 21 deterioration, unless the drug or device is packaged in a form and
 22 manner and the drug's or device's label bears a statement of such
 23 precautions as the federal security administrator or the state
 24 department requires by rule or regulation as necessary for the
 25 protection of the public health. A rule or regulation may not be
 26 established for any drug recognized in an official compendium
 27 until the federal security administrator or the state department
 28 informs the appropriate body charged with the revision of the
 29 compendium of the need for the packaging or labeling
 30 requirements and that body fails within a reasonable time to
 31 prescribe requirements.

32 (9) If a drug's container is made, formed, or filled as to be
 33 misleading.

34 (10) If a drug is an imitation of another drug.

35 (11) If a drug is offered for sale under the name of another drug.

36 (12) If a drug is or purports to be or is represented to be a drug
 37 composed wholly or partly of insulin, unless:

38 (A) the drug is from a batch with respect to which a certificate
 39 or release has been issued under Section 506 of the Federal
 40 Act; and

41 (B) the certificate or release is in effect with respect to the
 42 drug.

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1 (13) If a drug is or purports to be or is represented to be a drug
 2 composed wholly or partly of any kind of penicillin, streptomycin,
 3 chloretetracycline, chloramphenicol, bacitracin, or any other
 4 antibiotic drug, or any derivative of those drugs, unless:

5 (A) the drug is from a batch with respect to which a certificate
 6 or release has been issued under Section 507 of the Federal
 7 Act; and

8 (B) the certificate or release is in effect with respect to that
 9 drug.

10 However, this subdivision does not apply to any drug or class of
 11 drugs exempted by regulations promulgated under Section 507(c)
 12 or 507(d) of the Federal Act.

13 (14) If a drug or device is dangerous to health when used in the
 14 dosage, or with the frequency or duration prescribed,
 15 recommended, or suggested in the labeling of the drug or device.

16 (15) Under the conditions described in section 6 of this chapter.

17 SECTION 3. IC 25-1-1.1-3 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. A board, a
 19 commission, or a committee shall revoke or suspend a license or
 20 certificate issued under this title by the board, the commission, or the
 21 committee if the individual who holds the license or certificate is
 22 convicted of any of the following:

23 (1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.

24 (2) **Dealing in methamphetamine under IC 35-48-4-1.5.**

25 (3) Dealing in a schedule I, II, or III controlled substance under
 26 IC 35-48-4-2.

27 ~~(3)~~ (4) Dealing in a schedule IV controlled substance under
 28 IC 35-48-4-3.

29 ~~(4)~~ (5) Dealing in a schedule V controlled substance under
 30 IC 35-48-4-4.

31 ~~(5)~~ (6) Dealing in a substance represented to be a controlled
 32 substance under IC 35-48-4-4.5.

33 ~~(6)~~ (7) Knowingly or intentionally manufacturing, advertising,
 34 distributing, or possessing with intent to manufacture, advertise,
 35 or distribute a substance represented to be a controlled substance
 36 under IC 35-48-4-4.6.

37 ~~(7)~~ (8) Dealing in a counterfeit substance under IC 35-48-4-5.

38 (8) (9) Dealing in marijuana, hash oil, or hashish under
 39 IC 35-48-4-10(b).

40 ~~(9)~~ (10) Conspiracy under IC 35-41-5-2 to commit an offense
 41 listed in subdivisions (1) through ~~(8)~~ (9).

42 ~~(10)~~ (11) Attempt under IC 35-41-5-1 to commit an offense listed

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1 in subdivisions (1) through ~~(8)~~: **(9)**.

2 ~~(11)~~ **(12)** An offense in any other jurisdiction in which the
3 elements of the offense for which the conviction was entered are
4 substantially similar to the elements of an offense described under
5 subdivisions (1) through ~~(10)~~: **(11)**.

6 ~~(12)~~ **(13)** A violation of any federal or state drug law or rule
7 related to wholesale legend drug distributors licensed under
8 IC 25-26-14.

9 SECTION 4. IC 31-30-1-4 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The juvenile
11 court does not have jurisdiction over an individual for an alleged
12 violation of:

13 (1) IC 35-42-1-1 (murder);

14 (2) IC 35-42-3-2 (kidnapping);

15 (3) IC 35-42-4-1 (rape);

16 (4) IC 35-42-4-2 (criminal deviate conduct);

17 (5) IC 35-42-5-1 (robbery) if:

18 (A) the robbery was committed while armed with a deadly
19 weapon; or

20 (B) the robbery results in bodily injury or serious bodily
21 injury;

22 (6) IC 35-42-5-2 (carjacking);

23 (7) IC 35-45-9-3 (criminal gang activity);

24 (8) IC 35-45-9-4 (criminal gang intimidation);

25 (9) IC 35-47-2-1 (carrying a handgun without a license);

26 (10) IC 35-47-10 (children and firearms);

27 (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun);

28 (12) IC 35-48-4-1 (dealing in cocaine or a narcotic drug);

29 **(13) IC 35-48-4-1.5 (dealing in methamphetamine);**

30 **(14) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
31 substance);**

32 ~~(14)~~ **(15) IC 35-48-4-3 (dealing in a schedule IV controlled
33 substance); or**

34 ~~(15)~~ **(16) any offense that may be joined under IC 35-34-1-9(a)(2)
35 with any crime listed in subdivisions (1) through ~~(14)~~; **(15);****

36 if the individual was at least sixteen (16) years of age at the time of the
37 alleged violation.

38 (b) Once an individual described in subsection (a) has been charged
39 with any crime listed in subsection (a)(1) through ~~(a)(15)~~; **(a)(16)**, the
40 court having adult criminal jurisdiction shall retain jurisdiction over the
41 case even if the individual pleads guilty to or is convicted of a lesser
42 included offense. A plea of guilty to or a conviction of a lesser included

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1 offense does not vest jurisdiction in the juvenile court.

2 SECTION 5. IC 34-24-1-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following
4 may be seized:

5 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
6 intended for use by the person or persons in possession of them to
7 transport or in any manner to facilitate the transportation of the
8 following:

9 (A) A controlled substance for the purpose of committing,
10 attempting to commit, or conspiring to commit any of the
11 following:

12 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

13 (ii) **Dealing in methamphetamine (IC 35-48-4-1.5).**

14 (iii) Dealing in a schedule I, II, or III controlled substance
15 (IC 35-48-4-2).

16 ~~(iii)~~ (iv) Dealing in a schedule IV controlled substance (IC
17 35-48-4-3).

18 ~~(iv)~~ (v) Dealing in a schedule V controlled substance (IC
19 35-48-4-4).

20 ~~(v)~~ (vi) Dealing in a counterfeit substance (IC 35-48-4-5).

21 ~~(vi)~~ (vii) Possession of cocaine or narcotic drug (IC
22 35-48-4-6).

23 ~~(vii)~~ (viii) Dealing in paraphernalia (IC 35-48-4-8.5).

24 ~~(viii)~~ (ix) Dealing in marijuana, hash oil, or hashish (IC
25 35-48-4-10).

26 (B) Any stolen (IC 35-43-4-2) or converted property (IC
27 35-43-4-3) if the retail or repurchase value of that property is
28 one hundred dollars (\$100) or more.

29 (C) Any hazardous waste in violation of IC 13-30-6-6.

30 (2) All money, negotiable instruments, securities, weapons,
31 communications devices, or any property commonly used as
32 consideration for a violation of IC 35-48-4 (other than items
33 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
34 before its repeal):

35 (A) furnished or intended to be furnished by any person in
36 exchange for an act that is in violation of a criminal statute;

37 (B) used to facilitate any violation of a criminal statute; or

38 (C) traceable as proceeds of the violation of a criminal statute.

39 (3) Any portion of real or personal property purchased with
40 money that is traceable as a proceed of a violation of a criminal
41 statute.

42 (4) A vehicle that is used by a person to:

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- 1 (A) commit, attempt to commit, or conspire to commit;
 2 (B) facilitate the commission of; or
 3 (C) escape from the commission of;
 4 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 5 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 6 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 7 (5) Real property owned by a person who uses it to commit any of
 8 the following as a Class A felony, a Class B felony, or a Class C
 9 felony:
 10 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
 11 (B) **Dealing in methamphetamine (IC 35-48-4-1.5).**
 12 (C) Dealing in a schedule I, II, or III controlled substance
 13 (IC 35-48-4-2).
 14 ~~(D)~~ (D) Dealing in a schedule IV controlled substance
 15 (IC 35-48-4-3).
 16 ~~(E)~~ (E) Dealing in marijuana, hash oil, or hashish
 17 (IC 35-48-4-10).
 18 (6) Equipment and recordings used by a person to commit fraud
 19 under IC 35-43-5-4(11).
 20 (7) Recordings sold, rented, transported, or possessed by a person
 21 in violation of IC 24-4-10.
 22 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 23 defined by IC 35-45-6-1) that is the object of a corrupt business
 24 influence violation (IC 35-45-6-2).
 25 (9) Unlawful telecommunications devices (as defined in
 26 IC 35-45-13-6) and plans, instructions, or publications used to
 27 commit an offense under IC 35-45-13.
 28 (b) A vehicle used by any person as a common or contract carrier in
 29 the transaction of business as a common or contract carrier is not
 30 subject to seizure under this section, unless it can be proven by a
 31 preponderance of the evidence that the owner of the vehicle knowingly
 32 permitted the vehicle to be used to engage in conduct that subjects it to
 33 seizure under subsection (a).
 34 (c) Money, negotiable instruments, securities, weapons,
 35 communications devices, or any property commonly used as
 36 consideration for a violation of IC 35-48-4 found near or on a person
 37 who is committing, attempting to commit, or conspiring to commit any
 38 of the following offenses shall be admitted into evidence in an action
 39 under this chapter as prima facie evidence that the money, negotiable
 40 instrument, security, or other thing of value is property that has been
 41 used or was to have been used to facilitate the violation of a criminal
 42 statute or is the proceeds of the violation of a criminal statute:

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- 1 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
 2 (2) **IC 35-48-4-1.5 (dealing in methamphetamine).**
 3 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 4 substance).
 5 ~~(3)~~ (4) IC 35-48-4-3 (dealing in a schedule IV controlled
 6 substance).
 7 ~~(4)~~ (5) IC 35-48-4-4 (dealing in a schedule V controlled
 8 substance) as a Class B felony.
 9 ~~(5)~~ (6) IC 35-48-4-6 (possession of cocaine or narcotic drug) as
 10 a Class A felony, Class B felony, or Class C felony.
 11 ~~(6)~~ (7) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish)
 12 as a Class C felony.

13 SECTION 6. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999,
 14 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose
 16 for a crime, the court shall consider:

- 17 (1) the risk that the person will commit another crime;
 18 (2) the nature and circumstances of the crime committed;
 19 (3) the person's:
 20 (A) prior criminal record;
 21 (B) character; and
 22 (C) condition;
 23 (4) whether the victim of the crime was less than twelve (12)
 24 years of age or at least sixty-five (65) years of age;
 25 (5) whether the person violated a protective order issued against
 26 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its
 27 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and
 28 (6) any oral or written statement made by a victim of the crime.

29 (b) The court may consider the following factors as aggravating
 30 circumstances or as favoring imposing consecutive terms of
 31 imprisonment:

- 32 (1) The person has recently violated the conditions of any
 33 probation, parole, or pardon granted to the person.
 34 (2) The person has a history of criminal or delinquent activity.
 35 (3) The person is in need of correctional or rehabilitative
 36 treatment that can best be provided by commitment of the person
 37 to a penal facility.
 38 (4) Imposition of a reduced sentence or suspension of the
 39 sentence and imposition of probation would depreciate the
 40 seriousness of the crime.
 41 (5) The victim of the crime was less than twelve (12) years of age
 42 or at least sixty-five (65) years of age.



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- 1 (6) The victim of the crime was mentally or physically infirm.
 2 (7) The person committed a forcible felony while wearing a
 3 garment designed to resist the penetration of a bullet.
 4 (8) The person committed a sex crime listed in subsection (e) and:
 5 (A) the crime created an epidemiologically demonstrated risk
 6 of transmission of the human immunodeficiency virus (HIV)
 7 and involved the sex organ of one (1) person and the mouth,
 8 anus, or sex organ of another person;
 9 (B) the person had knowledge that the person was a carrier of
 10 HIV; and
 11 (C) the person had received risk counseling as described in
 12 subsection (g).
 13 (9) The person committed an offense related to controlled
 14 substances listed in subsection (f) if:
 15 (A) the offense involved:
 16 (i) the delivery by any person to another person; or
 17 (ii) the use by any person on another person;
 18 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 19 paraphernalia that creates an epidemiologically demonstrated
 20 risk of transmission of HIV by involving percutaneous contact;
 21 (B) the person had knowledge that the person was a carrier of
 22 the human immunodeficiency virus (HIV); and
 23 (C) the person had received risk counseling as described in
 24 subsection (g).
 25 (10) The person committed the offense in an area of a
 26 consolidated or second class city that is designated as a public
 27 safety improvement area by the Indiana criminal justice institute
 28 under IC 36-8-19.5.
 29 (11) The injury to or death of the victim of the crime was the
 30 result of shaken baby syndrome (as defined in IC 16-41-40-2).
 31 (12) Before the commission of the crime, the person administered
 32 to the victim of the crime, without the victim's knowledge, a
 33 sedating drug or a drug that had a hypnotic effect on the victim,
 34 or the person had knowledge that such a drug had been
 35 administered to the victim without the victim's knowledge.
 36 (13) The person:
 37 (A) committed trafficking with an inmate under IC 35-44-3-9;
 38 and
 39 (B) is an employee of the penal facility.
 40 (c) The court may consider the following factors as mitigating
 41 circumstances or as favoring suspending the sentence and imposing
 42 probation:

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- 1 (1) The crime neither caused nor threatened serious harm to
 2 persons or property, or the person did not contemplate that it
 3 would do so.
 4 (2) The crime was the result of circumstances unlikely to recur.
 5 (3) The victim of the crime induced or facilitated the offense.
 6 (4) There are substantial grounds tending to excuse or justify the
 7 crime, though failing to establish a defense.
 8 (5) The person acted under strong provocation.
 9 (6) The person has no history of delinquency or criminal activity,
 10 or the person has led a law-abiding life for a substantial period
 11 before commission of the crime.
 12 (7) The person is likely to respond affirmatively to probation or
 13 short term imprisonment.
 14 (8) The character and attitudes of the person indicate that the
 15 person is unlikely to commit another crime.
 16 (9) The person has made or will make restitution to the victim of
 17 the crime for the injury, damage, or loss sustained.
 18 (10) Imprisonment of the person will result in undue hardship to
 19 the person or the dependents of the person.
 20 (11) The person was convicted of a crime involving the use of
 21 force against a person who had repeatedly inflicted physical or
 22 sexual abuse upon the convicted person and evidence shows that
 23 the convicted person suffered from the effects of battery as a
 24 result of the past course of conduct of the individual who is the
 25 victim of the crime for which the person was convicted.
 26 (d) The criteria listed in subsections (b) and (c) do not limit the
 27 matters that the court may consider in determining the sentence.
 28 (e) For the purposes of this article, the following crimes are
 29 considered sex crimes:
 30 (1) Rape (IC 35-42-4-1).
 31 (2) Criminal deviate conduct (IC 35-42-4-2).
 32 (3) Child molesting (IC 35-42-4-3).
 33 (4) Child seduction (IC 35-42-4-7).
 34 (5) Prostitution (IC 35-45-4-2).
 35 (6) Patronizing a prostitute (IC 35-45-4-3).
 36 (7) Incest (IC 35-46-1-3).
 37 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).
 38 (f) For the purposes of this article, the following crimes are
 39 considered offenses related to controlled substances:
 40 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
 41 (2) **Dealing in methamphetamine (IC 35-48-4-1.5).**
 42 (3) Dealing in a schedule I, II, or III controlled substance

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- 1 (IC 35-48-4-2).
- 2 ~~(3)~~ **(4)** Dealing in a schedule IV controlled substance
- 3 (IC 35-48-4-3).
- 4 ~~(4)~~ **(5)** Dealing in a schedule V controlled substance
- 5 (IC 35-48-4-4).
- 6 ~~(5)~~ **(6)** Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 7 ~~(6)~~ **(7)** Possession of a controlled substance (IC 35-48-4-7).
- 8 ~~(7)~~ **(8)** Dealing in paraphernalia (IC 35-48-4-8.5).
- 9 ~~(8)~~ **(9)** Possession of paraphernalia (IC 35-48-4-8.3).
- 10 ~~(9)~~ **(10)** Offenses relating to registration (IC 35-48-4-14).

11 (g) For the purposes of this section, a person received risk
 12 counseling if the person had been:

- 13 (1) notified in person or in writing that tests have confirmed the
- 14 presence of antibodies to the human immunodeficiency virus
- 15 (HIV) in the person's blood; and
- 16 (2) warned of the behavior that can transmit HIV.

17 SECTION 7. IC 35-42-1-1 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person who:

- 19 (1) knowingly or intentionally kills another human being;
- 20 (2) kills another human being while committing or attempting to
- 21 commit arson, burglary, child molesting, consumer product
- 22 tampering, criminal deviate conduct, kidnapping, rape, robbery,
- 23 or carjacking;
- 24 (3) kills another human being while committing or attempting to
- 25 commit:
 - 26 (A) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 - 27 **(B) dealing in methamphetamine (IC 35-48-4-1.5);**
 - 28 **(C) dealing in a schedule I, II, or III controlled substance**
 - 29 **(IC 35-48-4-2);**
 - 30 ~~(C)~~ **(D)** dealing in a schedule IV controlled substance
 - 31 **(IC 35-48-4-3); or**
 - 32 ~~(D)~~ **(E)** dealing in a schedule V controlled substance; or
 - 33 (4) knowingly or intentionally kills a fetus that has attained
 - 34 viability (as defined in IC 16-18-2-365);
 - 35 commits murder, a felony.

36 SECTION 8. IC 35-45-6-1 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this
 38 chapter:

39 "Documentary material" means any document, drawing, photograph,
 40 recording, or other tangible item containing compiled data from which
 41 information can be either obtained or translated into a usable form.

42 "Enterprise" means:

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1 (1) a sole proprietorship, corporation, limited liability company,
2 partnership, business trust, or governmental entity; or

3 (2) a union, an association, or a group, whether a legal entity or
4 merely associated in fact.

5 "Pattern of racketeering activity" means engaging in at least two (2)
6 incidents of racketeering activity that have the same or similar intent,
7 result, accomplice, victim, or method of commission, or that are
8 otherwise interrelated by distinguishing characteristics that are not
9 isolated incidents. However, the incidents are a pattern of racketeering
10 activity only if at least one (1) of the incidents occurred after August
11 31, 1980, and if the last of the incidents occurred within five (5) years
12 after a prior incident of racketeering activity.

13 "Racketeering activity" means to commit, to attempt to commit, to
14 conspire to commit a violation of, or aiding and abetting in a violation
15 of any of the following:

16 (1) A provision of IC 23-2-1, or of a rule or order issued under
17 IC 23-2-1.

18 (2) A violation of IC 35-45-9.

19 (3) A violation of IC 35-47.

20 (4) A violation of IC 35-49-3.

21 (5) Murder (IC 35-42-1-1).

22 (6) Battery as a Class C felony (IC 35-42-2-1).

23 (7) Kidnapping (IC 35-42-3-2).

24 (8) Child exploitation (IC 35-42-4-4).

25 (9) Robbery (IC 35-42-5-1).

26 (10) Carjacking (IC 35-42-5-2).

27 (11) Arson (IC 35-43-1-1).

28 (12) Burglary (IC 35-43-2-1).

29 (13) Theft (IC 35-43-4-2).

30 (14) Receiving stolen property (IC 35-43-4-2).

31 (15) Forgery (IC 35-43-5-2).

32 (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).

33 (17) Bribery (IC 35-44-1-1).

34 (18) Official misconduct (IC 35-44-1-2).

35 (19) Conflict of interest (IC 35-44-1-3).

36 (20) Perjury (IC 35-44-2-1).

37 (21) Obstruction of justice (IC 35-44-3-4).

38 (22) Intimidation (IC 35-45-2-1).

39 (23) Promoting prostitution (IC 35-45-4-4).

40 (24) Promoting professional gambling (IC 35-45-5-4).

41 (25) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

42 (26) **Dealing in methamphetamine (IC 35-48-4-1.5).**

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- 1 (27) Dealing in a schedule I, II, or III controlled substance
 2 (IC 35-48-4-2).
 3 ~~(27)~~ (28) Dealing in a schedule IV controlled substance
 4 (IC 35-48-4-3).
 5 ~~(28)~~ (29) Dealing in a schedule V controlled substance
 6 (IC 35-48-4-4).
 7 ~~(29)~~ (30) Dealing in marijuana, hash oil, or hashish
 8 (IC 35-48-4-10).
 9 ~~(30)~~ (31) Money laundering (IC 35-45-15-5).

10 SECTION 9. IC 35-46-1-8 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. A person eighteen
 12 (18) years of age or older who knowingly or intentionally encourages,
 13 aids, induces, or causes a person under eighteen (18) years of age to
 14 commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2)
 15 commits contributing to delinquency, a Class A misdemeanor.
 16 However, the offense is a Class C felony if the person knowingly or
 17 intentionally encourages, aids, induces, or causes a person less than
 18 eighteen (18) years of age to commit an act that would be a felony if
 19 committed by an adult under:

- 20 (1) IC 35-48-4-1;
 21 (2) **IC 35-48-4-1.5**;
 22 (3) IC 35-48-4-2;
 23 ~~(3)~~ (4) IC 35-48-4-3;
 24 ~~(4)~~ (5) IC 35-48-4-4;
 25 ~~(5)~~ (6) IC 35-48-4-4.5;
 26 ~~(6)~~ (7) IC 35-48-4-4.6; or
 27 ~~(7)~~ (8) IC 35-48-4-5.

28 SECTION 10. IC 35-47-4-5, AS AMENDED BY P.L.14-2000,
 29 SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2001]: Sec. 5. (a) As used in this section, "serious violent
 31 felon" means a person who has been convicted of:

- 32 (1) committing a serious violent felony in:
 33 (A) Indiana; or
 34 (B) any other jurisdiction in which the elements of the crime
 35 for which the conviction was entered are substantially similar
 36 to the elements of a serious violent felony; or
 37 (2) attempting to commit or conspiring to commit a serious
 38 violent felony in:
 39 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;
 40 or
 41 (B) any other jurisdiction in which the elements of the crime
 42 for which the conviction was entered are substantially similar



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- 1 to the elements of attempting to commit or conspiring to
 2 commit a serious violent felony.
- 3 (b) As used in this section, "serious violent felony" means:
- 4 (1) murder (IC 35-42-1-1);
- 5 (2) voluntary manslaughter (IC 35-42-1-3);
- 6 (3) reckless homicide not committed by means of a vehicle
 7 (IC 35-42-1-5);
- 8 (4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C
 9 felony (IC 35-42-2-1(a)(3));
- 10 (5) aggravated battery (IC 35-42-2-1.5);
- 11 (6) kidnapping (IC 35-42-3-2);
- 12 (7) criminal confinement (IC 35-42-3-3);
- 13 (8) rape (IC 35-42-4-1);
- 14 (9) criminal deviate conduct (IC 35-42-4-2);
- 15 (10) child molesting (IC 35-42-4-3);
- 16 (11) sexual battery as a Class C felony (IC 35-42-4-8);
- 17 (12) robbery (IC 35-42-5-1);
- 18 (13) carjacking (IC 35-42-5-2);
- 19 (14) arson as a Class A felony or Class B felony
 20 (IC 35-43-1-1(a));
- 21 (15) burglary as a Class A felony or Class B felony
 22 (IC 35-43-2-1);
- 23 (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- 24 (17) resisting law enforcement as a Class B felony or Class C
 25 felony (IC 35-44-3-3);
- 26 (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- 27 (19) trafficking with an inmate as a Class C felony
 28 (IC 35-44-3-9);
- 29 (20) criminal gang intimidation (IC 35-45-9-4);
- 30 (21) stalking as a Class B felony or Class C felony
 31 (IC 35-45-10-5);
- 32 (22) incest (IC 35-46-1-3);
- 33 (23) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- 34 (24) dealing in a schedule I, II, or III controlled substance
 35 (IC 35-48-4-2);
- 36 (25) dealing in a schedule IV controlled substance (IC 35-48-4-3);
- 37 **or**
- 38 (26) dealing in a schedule V controlled substance (IC 35-48-4-4);
- 39 **or**
- 40 **(27) dealing in methamphetamine (IC 35-48-4-1.5).**
- 41 (c) A serious violent felon who knowingly or intentionally possesses
 42 a firearm commits unlawful possession of a firearm by a serious violent

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1 felon, a Class B felony.

2 SECTION 11. IC 35-48-4-1.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2001]: **Sec. 1.5. (a) A person who:**

5 **(1) knowingly or intentionally:**

6 **(A) manufactures;**

7 **(B) finances the manufacture of;**

8 **(C) delivers; or**

9 **(D) finances the delivery of;**

10 **methamphetamine, pure or adulterated; or**

11 **(2) possesses, with intent to:**

12 **(A) manufacture;**

13 **(B) finance the manufacture of;**

14 **(C) deliver; or**

15 **(D) finance the delivery of;**

16 **methamphetamine, pure or adulterated;**

17 **commits dealing in methamphetamine, a Class B felony, except as**
18 **provided in subsection (b).**

19 **(b) The offense is a Class A felony if:**

20 **(1) the amount of the drug involved weighs three (3) grams or**
21 **more;**

22 **(2) the person:**

23 **(A) delivered; or**

24 **(B) financed the delivery of;**

25 **the drug to a person less than eighteen (18) years of age at**
26 **least three (3) years junior to the person; or**

27 **(3) the person delivered or financed the delivery of the drug:**

28 **(A) on a school bus; or**

29 **(B) in, on, or within one thousand (1,000) feet of:**

30 **(i) school property;**

31 **(ii) a public park; or**

32 **(iii) a family housing complex.**

33 SECTION 12. IC 35-48-4-15 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 15. (a)** If a person is
35 convicted of an offense under section 1, **1.5**, 2, 3, 4, 5, 6, 7, 10, or 11
36 of this chapter, or conspiracy to commit an offense under section 1, **1.5**,
37 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, the court shall, in addition to
38 any other order the court enters, order that the person's:

39 **(1) operator's license be suspended;**

40 **(2) existing motor vehicle registrations be suspended; and**

41 **(3) ability to register motor vehicles be suspended;**

42 **by the bureau of motor vehicles for a period specified by the court of**

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1 at least six (6) months but not more than two (2) years.

2 (b) If a person is convicted of an offense described in subsection (a)
3 and the person does not hold an operator's license or a learner's permit,
4 the court shall order that the person may not receive an operator's
5 license or a learner's permit from the bureau of motor vehicles for a
6 period of not less than six (6) months.

7 SECTION 13. IC 35-48-4-16 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2001]: **Sec. 16. A person who knowingly or
10 intentionally:**

- 11 (1) purchases, rents, or otherwise procures chemicals,
12 supplies, equipment, or a laboratory location; or
 - 13 (2) sets up equipment or supplies;
- 14 **with the intent to illegally manufacture methamphetamine commits**
15 **illegal operation of a methamphetamine laboratory, a Class C**
16 **felony.**

17 SECTION 14. IC 35-50-2-2, AS AMENDED BY P.L.188-1999,
18 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a
20 sentence for a felony, except as provided in this section or in section
21 2.1 of this chapter.

22 (b) With respect to the following crimes listed in this subsection, the
23 court may suspend only that part of the sentence that is in excess of the
24 minimum sentence:

- 25 (1) The crime committed was a Class A or Class B felony and the
26 person has a prior unrelated felony conviction.
- 27 (2) The crime committed was a Class C felony and less than seven
28 (7) years have elapsed between the date the person was
29 discharged from probation, imprisonment, or parole, whichever
30 is later, for a prior unrelated felony conviction and the date the
31 person committed the Class C felony for which the person is
32 being sentenced.
- 33 (3) The crime committed was a Class D felony and less than three
34 (3) years have elapsed between the date the person was
35 discharged from probation, imprisonment, or parole, whichever
36 is later, for a prior unrelated felony conviction and the date the
37 person committed the Class D felony for which the person is
38 being sentenced. However, the court may suspend the minimum
39 sentence for the crime only if the court orders home detention
40 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
41 sentence specified for the crime under this chapter.
- 42 (4) The felony committed was:

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- 1 (A) murder (IC 35-42-1-1);
 2 (B) battery (IC 35-42-2-1) with a deadly weapon;
 3 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 4 (D) kidnapping (IC 35-42-3-2);
 5 (E) confinement (IC 35-42-3-3) with a deadly weapon;
 6 (F) rape (IC 35-42-4-1) as a Class A felony;
 7 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 8 felony;
 9 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 10 felony;
 11 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 12 with a deadly weapon;
 13 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 14 injury;
 15 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 16 or with a deadly weapon;
 17 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 18 weapon;
 19 (M) escape (IC 35-44-3-5) with a deadly weapon;
 20 (N) rioting (IC 35-45-1-2) with a deadly weapon;
 21 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a
 22 Class A felony;
 23 **(P) dealing in methamphetamine (IC 35-48-4-1.5) as a**
 24 **Class A felony;**
 25 **(Q) dealing in a schedule I, II, or III controlled substance (IC**
 26 **35-48-4-2) if the amount of controlled substance involved has**
 27 **an aggregate weight of three (3) grams or more;**
 28 ~~(R)~~ **(R)** an offense under IC 9-30-5 (operating a vehicle while
 29 intoxicated) and the person who committed the offense has
 30 accumulated at least two (2) prior unrelated convictions under
 31 IC 9-30-5; or
 32 ~~(S)~~ **(S)** aggravated battery (IC 35-42-2-1.5).

33 (c) Except as provided in subsection (e), whenever the court
 34 suspends a sentence for a felony, it shall place the person on probation
 35 under IC 35-38-2 for a fixed period to end not later than the date that
 36 the maximum sentence that may be imposed for the felony will expire.

37 (d) The minimum sentence for a person convicted of voluntary
 38 manslaughter may not be suspended unless the court finds at the
 39 sentencing hearing that the crime was not committed by means of a
 40 deadly weapon.

41 (e) Whenever the court suspends that part of an offender's (as
 42 defined in IC 5-2-12-4) sentence that is suspendible under subsection

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1 (b), the court shall place the offender on probation under IC 35-38-2 for
2 not more than ten (10) years.

3 (f) An additional term of imprisonment imposed under
4 IC 35-50-2-11 may not be suspended.

5 (g) A term of imprisonment imposed under IC 35-47-10-6 or
6 IC 35-47-10-7 may not be suspended if the commission of the offense
7 was knowing or intentional.

8 (h) A term of imprisonment imposed for an offense under
9 IC 35-48-4-6(b)(1)(B) may not be suspended.

10 SECTION 15. IC 35-50-2-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may
12 seek either a death sentence or a sentence of life imprisonment without
13 parole for murder by alleging, on a page separate from the rest of the
14 charging instrument, the existence of at least one (1) of the aggravating
15 circumstances listed in subsection (b). In the sentencing hearing after
16 a person is convicted of murder, the state must prove beyond a
17 reasonable doubt the existence of at least one (1) of the aggravating
18 circumstances alleged. However, the state may not proceed against a
19 defendant under this section if a court determines at a pretrial hearing
20 under IC 35-36-9 that the defendant is a mentally retarded individual.

21 (b) The aggravating circumstances are as follows:

22 (1) The defendant committed the murder by intentionally killing
23 the victim while committing or attempting to commit any of the
24 following:

25 (A) Arson (IC 35-43-1-1).

26 (B) Burglary (IC 35-43-2-1).

27 (C) Child molesting (IC 35-42-4-3).

28 (D) Criminal deviate conduct (IC 35-42-4-2).

29 (E) Kidnapping (IC 35-42-3-2).

30 (F) Rape (IC 35-42-4-1).

31 (G) Robbery (IC 35-42-5-1).

32 (H) Carjacking (IC 35-42-5-2).

33 (I) Criminal gang activity (IC 35-45-9-3).

34 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

35 **(K) Dealing in methamphetamine (IC 35-48-4-1.5).**

36 (2) The defendant committed the murder by the unlawful
37 detonation of an explosive with intent to injure person or damage
38 property.

39 (3) The defendant committed the murder by lying in wait.

40 (4) The defendant who committed the murder was hired to kill.

41 (5) The defendant committed the murder by hiring another person
42 to kill.

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- 1 (6) The victim of the murder was a corrections employee,
 2 probation officer, parole officer, community corrections worker,
 3 home detention officer, fireman, judge, or law enforcement
 4 officer, and either:
 5 (A) the victim was acting in the course of duty; or
 6 (B) the murder was motivated by an act the victim performed
 7 while acting in the course of duty.
 8 (7) The defendant has been convicted of another murder.
 9 (8) The defendant has committed another murder, at any time,
 10 regardless of whether the defendant has been convicted of that
 11 other murder.
 12 (9) The defendant was:
 13 (A) under the custody of the department of correction;
 14 (B) under the custody of a county sheriff;
 15 (C) on probation after receiving a sentence for the commission
 16 of a felony; or
 17 (D) on parole;
 18 at the time the murder was committed.
 19 (10) The defendant dismembered the victim.
 20 (11) The defendant burned, mutilated, or tortured the victim while
 21 the victim was alive.
 22 (12) The victim of the murder was less than twelve (12) years of
 23 age.
 24 (13) The victim was a victim of any of the following offenses for
 25 which the defendant was convicted:
 26 (A) Battery as a Class D felony or as a Class C felony under
 27 IC 35-42-2-1.
 28 (B) Kidnapping (IC 35-42-3-2).
 29 (C) Criminal confinement (IC 35-42-3-3).
 30 (D) A sex crime under IC 35-42-4.
 31 (14) The victim of the murder was listed by the state or known by
 32 the defendant to be a witness against the defendant and the
 33 defendant committed the murder with the intent to prevent the
 34 person from testifying.
 35 (15) The defendant committed the murder by intentionally
 36 discharging a firearm (as defined in IC 35-47-1-5):
 37 (A) into an inhabited dwelling; or
 38 (B) from a vehicle.
 39 (16) The victim of the murder was pregnant and the murder
 40 resulted in the intentional killing of a fetus that has attained
 41 viability (as defined in IC 16-18-2-365).
 42 (c) The mitigating circumstances that may be considered under this

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- 1 section are as follows:
- 2 (1) The defendant has no significant history of prior criminal
- 3 conduct.
- 4 (2) The defendant was under the influence of extreme mental or
- 5 emotional disturbance when the murder was committed.
- 6 (3) The victim was a participant in or consented to the defendant's
- 7 conduct.
- 8 (4) The defendant was an accomplice in a murder committed by
- 9 another person, and the defendant's participation was relatively
- 10 minor.
- 11 (5) The defendant acted under the substantial domination of
- 12 another person.
- 13 (6) The defendant's capacity to appreciate the criminality of the
- 14 defendant's conduct or to conform that conduct to the
- 15 requirements of law was substantially impaired as a result of
- 16 mental disease or defect or of intoxication.
- 17 (7) The defendant was less than eighteen (18) years of age at the
- 18 time the murder was committed.
- 19 (8) Any other circumstances appropriate for consideration.
- 20 (d) If the defendant was convicted of murder in a jury trial, the jury
- 21 shall reconvene for the sentencing hearing. If the trial was to the court,
- 22 or the judgment was entered on a guilty plea, the court alone shall
- 23 conduct the sentencing hearing. The jury or the court may consider all
- 24 the evidence introduced at the trial stage of the proceedings, together
- 25 with new evidence presented at the sentencing hearing. The court shall
- 26 instruct the jury concerning the statutory penalties for murder and any
- 27 other offenses for which the defendant was convicted, the potential for
- 28 consecutive or concurrent sentencing, and the availability of good time
- 29 credit and clemency. The defendant may present any additional
- 30 evidence relevant to:
- 31 (1) the aggravating circumstances alleged; or
- 32 (2) any of the mitigating circumstances listed in subsection (c).
- 33 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 34 jury shall recommend to the court whether the death penalty or life
- 35 imprisonment without parole, or neither, should be imposed. The jury
- 36 may recommend:
- 37 (1) the death penalty; or
- 38 (2) life imprisonment without parole;
- 39 only if it makes the findings described in subsection (k). The court shall
- 40 make the final determination of the sentence, after considering the
- 41 jury's recommendation, and the sentence shall be based on the same
- 42 standards that the jury was required to consider. The court is not bound

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1 by the jury's recommendation. In making the final determination of the
 2 sentence after receiving the jury's recommendation, the court may
 3 receive evidence of the crime's impact on members of the victim's
 4 family.

5 (f) If a jury is unable to agree on a sentence recommendation after
 6 reasonable deliberations, the court shall discharge the jury and proceed
 7 as if the hearing had been to the court alone.

8 (g) If the hearing is to the court alone, except as provided by
 9 IC 35-36-9, the court shall:

10 (1) sentence the defendant to death; or

11 (2) impose a term of life imprisonment without parole;
 12 only if it makes the findings described in subsection (k).

13 (h) If a court sentences a defendant to death, the court shall order
 14 the defendant's execution to be carried out not later than one (1) year
 15 and one (1) day after the date the defendant was convicted. The
 16 supreme court has exclusive jurisdiction to stay the execution of a
 17 death sentence. If the supreme court stays the execution of a death
 18 sentence, the supreme court shall order a new date for the defendant's
 19 execution.

20 (i) If a person sentenced to death by a court files a petition for
 21 post-conviction relief, the court, not later than ninety (90) days after the
 22 date the petition is filed, shall set a date to hold a hearing to consider
 23 the petition. If a court does not, within the ninety (90) day period, set
 24 the date to hold the hearing to consider the petition, the court's failure
 25 to set the hearing date is not a basis for additional post-conviction
 26 relief. The attorney general shall answer the petition for post-conviction
 27 relief on behalf of the state. At the request of the attorney general, a
 28 prosecuting attorney shall assist the attorney general. The court shall
 29 enter written findings of fact and conclusions of law concerning the
 30 petition not later than ninety (90) days after the date the hearing
 31 concludes. However, if the court determines that the petition is without
 32 merit, the court may dismiss the petition within ninety (90) days
 33 without conducting a hearing under this subsection.

34 (j) A death sentence is subject to automatic review by the supreme
 35 court. The review, which shall be heard under rules adopted by the
 36 supreme court, shall be given priority over all other cases. The supreme
 37 court's review must take into consideration all claims that the:

38 (1) conviction or sentence was in violation of the:

39 (A) Constitution of the State of Indiana; or

40 (B) Constitution of the United States;

41 (2) sentencing court was without jurisdiction to impose a
 42 sentence; and

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1 (3) sentence:
2 (A) exceeds the maximum sentence authorized by law; or
3 (B) is otherwise erroneous.
4 If the supreme court cannot complete its review by the date set by the
5 sentencing court for the defendant's execution under subsection (h), the
6 supreme court shall stay the execution of the death sentence and set a
7 new date to carry out the defendant's execution.
8 (k) Before a sentence may be imposed under this section, the jury,
9 in a proceeding under subsection (e), or the court, in a proceeding
10 under subsection (g), must find that:
11 (1) the state has proved beyond a reasonable doubt that at least
12 one (1) of the aggravating circumstances listed in subsection (b)
13 exists; and
14 (2) any mitigating circumstances that exist are outweighed by the
15 aggravating circumstance or circumstances.
16 SECTION 16. [EFFECTIVE JULY 1, 2001] **IC 31-30-1-4,**
17 **IC 34-24-1-1, IC 35-38-1-7.1, IC 35-42-1-1, IC 35-45-6-1,**
18 **IC 35-46-1-8, IC 35-47-4-5, IC 35-48-4-15, IC 35-48-4-16,**
19 **IC 35-50-2-2, and IC 35-50-2-9, all as amended by this act, and**
20 **IC 35-48-4-1.5, as added by this act, apply only to offenses**
21 **committed after June 30, 2001.**

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